

NEW RULE. (1) A person may apply to the department for a variance from a water quality standard if the conditions at §75-5-222(2)(a)(i) and (ii), MCA are met. The applicant must demonstrate to the department that one of the six factors at 40 CFR 131.14(b)(2)(i) apply. The demonstration must consider any guidance developed by the department or EPA.

(2) The department shall review each application to determine whether a reasonable alternative, including but not limited to a permit compliance schedule, reuse, or other department actions already in place (e.g., a TMDL) would eliminate the need for the variance. If the department makes a preliminary finding that a reasonable alternative to approving a variance is available, the department shall consult with the applicant prior to making a final decision to approve or deny the variance.

(3) If, after consultation with the applicant, the department determines that no reasonable alternative to a variance exists, the department shall determine whether the information provided by the applicant pursuant to (1) adequately demonstrates the need for the variance. If the department finds that a variance is needed, the department shall approve a discharge variance which reflects the highest attainable water quality condition. The department shall consider any guidance developed by the department or EPA when establishing the highest attainable water quality condition. The variance will become effective and be incorporated into the applicant's permit only after adoption by the board in a formal rulemaking proceeding.

(4) The basis of the variance must be reviewed every 5 years. If, during the previous 5 years, remedial activities have resulted in improved water quality in the receiving waterbody, recipients of variances must, upon renewal at the subsequent 5-year interval, treat the pollutant to concentrations no higher than the ambient upstream condition of the waterbody as characterized for the previous 2 years. The upstream ambient condition must be characterized using any guidance developed by the department. Recipients of variances may receive a compliance schedule from the department in order to meet the more stringent requirements of the variance.